General Terms & Conditions of TomTec Imaging Systems GmbH for Software Maintenance Services

1. APPLICABILITY

1.1 The following General Terms and Conditions (hereinafter called „Terms & Conditions Software Maintenance) shall apply to customers of TomTec Imaging Systems GmbH (hereinafter called "TomTec") for software maintenance services provided by TomTec to customer for Licensed Software (as defined below). Customer hereinafter means: entrepreneur, legal person governed by public law and special fund governed by public law.

1.2 Without any further express agreement, their applicability also refers to future software maintenance services provided by TomTec to customer.

1.3 TomTec`s Terms & Conditions Software Maintenance are exclusively applicable. General terms and conditions of the customer or of any third party shall only be valid, if TomTec explicitly agrees to them in writing. If the customer does not agree to TomTec`s Terms & Conditions Software Maintenance, he will have to inform TomTec immediately in writing of such disagreement. In the event of such disagreement, TomTec reserves the right to withdraw its offer, without any liability. TomTec herewith rejects any standard terms and conditions of the customer and/or any third party that are also declared applicable.

2. DEFINITIONS

2.1 "**Services**": Services under the scope of these Terms & Conditions Software Maintenance are: (i) repair of malfunctions and removal of disturbances, (ii) Consulting Services / Hotline and (iii) TomTec`s obligation to inform the customer about improvements and relevant modified laws or regulations during the term of the software maintenance period.

2.2 „**Licensed Software**": means a copy of the software, of which the customer acquired a right of use within the scope of a software license from TomTec.

2.3 „**Hotfix**": means a temporary solution for preventing the occurrence of malfunctions or disturbances in the Licensed Software.

2.4 „**Service Pack**": means a copy of program parts containing either a single or a bundle of repairs of malfunctions or removals of disturbances for the Licensed Software.

2.5 „**Update**": means a copy of program parts containing either a single or a bundle of repairs of malfunctions or removals of disturbances and additional marginal performance features for the Licensed Software.

2.6 „**Upgrade**": means a copy of a software program representing an improved version of the Licensed Software by substantial additions to and adaptations of the performance features of the prior program version.

2.7 „**Remote Access Service (RAS)**": means remote access by a user in order to be able to connect the local computer with the remote computer or network and to use sources of the remote computer or network as if a LAN-connection would exist.

2.8 „**Call-Back-Procedure**": means a procedure for RAS via analogue or ISDN connection, whereby the customer is identified after dialling the telephone number of the customer. Shortly after hanging up a connection computer calls back in order to reconnect.

3. SCOPE OF SERVICES

The following software maintenance services only refer to the current version of the Licensed Software. These services will be provided by TomTec to the customer within the scope of the software maintenance, unless any other agreements have been made.

3.1 Repair of malfunctions and removal of disturbances

a) During the term of the software maintenance period TomTec will use its best effort to repair malfunctions or remove disturbances in the Licensed Software which materially affect the utilisation of the Licensed Software within a reasonable period of time. This obligation shall not apply to extensions to the interfaces and original functions of the Licensed Software that the customer has installed.

b) Any repair of malfunctions or removal of disturbances by TomTec requires that the customer

(i) logs the potential occurrence of the respective malfunction and/or disturbance including the circumstances under which it occurred and (ii) provides TomTec with such records for the repair of such malfunction or removal of such disturbance.

c) The software maintenance services provided by TomTec shall not contain the repair or removal of the following malfunctions or disturbances: malfunctions or disturbances, which are caused by (i) the improper utilisation of the Licensed Software or a utilisation contrary to the software license agreement; and/or (ii) the utilisation of the Licensed Software in a different operational environment as agreed; and/or (iii) the external influence of third parties, the influence of force majeure or other influences TomTec is not responsible for. Such malfunctions or disturbances can be repaired or removed by TomTec upon separate payment and upon request of the customer.

d) TomTec will use its best effort to repair or remove any malfunctions or disturbances in the Licensed Software at the option of TomTec (i) via remote maintenance of the system by RAS, (ii) at the location of the customer or (ii) if reproducible in the backup of the customer Licensed Software version at TomTec according to section 4, by delivery of a fault-free software. Minor malfunctions or disturbances in the Licensed Software will be repaired or removed by delivery of a new Service Pack, Update or Upgrade.

e) Response times, service hours and contact information for the communication of malfunctions or disturbances are specified in section 6 hereunder.

f) If TomTec fails to repair or remove malfunctions or disturbances within a reasonable period of time, the customer will be provided with a Hotfix, to the extent economically reasonable for the customer. However, TomTec will use its best effort to repair or remove malfunctions or disturbances on a permanent basis.

3.2 Consulting Services / Hotline

TomTec offers the customer a telephone emergency service (Hotline) for consulting and maintenance services, to answer questions regarding the software maintenance and regarding Service Packs, Updates und Upgrades delivered to customer. The Hotline offers the customer additional help without being a substitute for user training or consultations of the user manual.

3.3 Modifications due to modified laws or regulations

Should laws or other regulations require modifications and/or adaptations of the Licensed Software which are necessary for the agreed utilization of the Licensed Software, these are carried out in accordance with the scheduling possibilities of TomTec. TomTec will inform the customer about the required change. Modifications due to modified laws or regulations are subject to a separate payment by customer, in case of an unreasonably workload for TomTec.

3.4 Improvements

TomTec will inform the customer about new Service Packs, Updates und Upgrades pertaining to the Licensed Software. Copies of Service Packs and Updates for the Licensed Software will be provided to the customer free of charge. Copies of Upgrades of the Licensed Software and its documentation will be provided to the customer at a discount of 25% off of the current Upgrade-Price.

4. BACKUP OF THE CUSTOMER SOFTWARE VERSION AT TOMTEC

TomTec maintains an updated backup of the Licensed Software version installed at customer's location, in order to (i) guarantee a prompt replacement in case of destruction and/or loss of the Licensed Software and (ii) trace any malfunctions or disturbances of the Licensed Software reported by the customer with the respective version at TomTec.

5. DUTY TO COOPERATE

5.1 The customer agrees to the maintenance of the system according to section 3.1 d) by RAS with the Call-Back-Procedure. Modem and service software will be provided by TomTec free of charge during the term of the software maintenance period. Remote maintenance makes

rapid response times and diagnosis of malfunctions and disturbances possible without having to be at the customer site.

5.2 Should it be necessary, despite remote maintenance, to work at the customer site, the customer guarantees TomTec personnel unhindered access to its computers and grants them the required computer hours for the software maintenance free of charge.

5.3 The customer undertakes to back up data and programs stored on data carriers at frequent and regular intervals. It is advisable to do this on a daily basis.

6. CONTACT INFORMATION / SERVICE HOURS / RESPONSE TIME

6.1 All inquiries regarding consulting and maintenance services and the report of malfunctions and disturbances are to be submitted either via Hotline (+49/89-32175-740), email (support@tomtec.de) or facsimile (+49/89-32175-750). The customer bears the costs incurred for contacting TomTec.

6.2 TomTec provides service on all business days, Monday to Friday of any calendar week, except to statutory holidays in Germany, between 9 a.m. and 5 p.m CET/CEST. Other service hours require a separate written agreement and are not included in the annual service fees.

6.3 TomTec will use its best effort to respond to service and maintenance inquiries of the customer and to reports of malfunctions and disturbances at the latest until the next business day following the business day on which the inquiry or report has been received by TomTec.

7. DELIVERY OF PROGRAMS PARTS/PROGRAMS

TomTec provides the customer with Hotfixes, Service Packs, Updates and Upgrades (program parts/programs) in object code format, at the option of TomTec either (i) by delivery of the copy of such program part or program on an appropriate data carrier, (ii) or by electronic delivery or (iii) as download. The classification of the respective program/program part under the terms „Hotfix“, „Update“, „Upgrade“ and „Service Pack“ is at the equitable discretion of TomTec.

8. RIGHTS IN THE SOFTWARE PRODUCTS

8.1 The programs/program parts supplied by TomTec within the scope of the software maintenance are the intellectual property of TomTec and protected by copyright, patent rights and other property rights.

8.2 TomTec grants the customer a single-user, non-exclusive license on programs/program parts (Hotfixes, Service Packs, Updates, and Upgrades) and corresponding documentation according to the license agreement for the Licensed Software.

8.3 The customer obtains a right of use on the programs/program parts supplied by TomTec, only if he owns a valid right of use on the Licensed Software. The customer is not allowed to reverse engineer, decompile, disassemble or make other changes or interventions in the software, except and only to the extent that such activity is expressly permitted by applicable law.

8.4 The right of use on the program/program parts replaced by program/program parts supplied by TomTec within the scope of the software maintenance terminates within 2 weeks after the customer uses the supplied program/program parts operationally. However, such right of use terminates, at the latest, one calendar month after receipt of the supplied program/program parts by the customer. The customer is entitled to create a backup copy for archival purposes.

9. TERMS AND CONDITIONS OF PAYMENT

9.1 The annual fees for the software maintenance services are stated in TomTec`s price list, most current upon execution of the software maintenance agreement. Additional services are invoiced separately. In particular, TomTec invoices software maintenance services rendered at the location of the customer due to malfunctions and/or disturbances not caused by the Licensed Software. All prices and fees do not include VAT.

9.2 The agreed service fees are subject to change by TomTec. However, fees may be adjusted for the first time after lapse of 12 months. The customer will be informed of the establishment of new service fees 3 months in advance. Should the fee adjustment be more than 10%, the customer has the right to extraordinarily terminate the software maintenance services which the customer is entitled to exercise within 3 months after notification of the new fees.

9.3 The total invoice amount is payable without deductions subsequent to receipt of invoice. The service fees will be invoiced annually in advance; additional services, which must be ordered by customer in writing, will be invoiced separately subsequent to fulfilment of performance.

10. TERM, TERMINATION

10.1 Term. This agreement shall be effective from the next day following the day on which the warranty period expires or the day as agreed between the parties and shall continue for a period of twelve (12) months. This agreement shall be automatically extended for periods of one (1) year on a recurring basis, unless written notice of one party's intention to terminate is provided to the other party.

10.2 Termination. Each Party can terminate this Agreement with a time limit of three (3) months prior to the expiration of the Agreement or an extension period. Each Party retains the right to terminate this Agreement due to a material reason. The termination notice must be made in writing. Email will not be sufficient to fulfill the written form.

11. CONFIDENTIALITY AND DATA PROTECTION

11.1 The customer undertakes to treat confidential information which is disclosed to him in the course of the business relationship of TomTec with their customer as confidential. Any such information must not be disclosed to third parties. Confidential information is, in particular, all information concerning trade and business secrets and all information that is characterized or marked as confidential.

11.2 The following information is considered to be non-confidential: (i) Information which has already been made public to a broad extent at the time of its disclosure, (ii) Information which is made public to a broad extent at the time of disclosure, unless a breach of contract by customer takes place, (iii) Information which became known to the customer in written form through daily business before its disclosure; or (iv) Information, which, at the time of disclosure, is received by customer from the third party that legally owns it. This does not include information which has been received by an infringement of contract, or legal or trust obligations.

11.3 The customer will inform his employees about the confidentiality of the information according to Paragraph 11.1 and to oblige them to maintain secrecy.

11.4 After a written request by TomTec the customer must return all materials which contain or present confidential information within a reasonable period.

11.5 TomTec will comply with all applicable laws and regulations relating to the protection of data, notably in the event customer provides access to its place of business or to its hard- and software to TomTec. TomTec will ensure that its employees and/or agents having access to any personal data are bound by these terms as well. Personal data will be treated in accordance with all applicable laws and regulations relating to the protection of data.

12. WARRANTY

12.1 To the extent that the software maintenance service agreement contains sales law provisions, the following terms 12.2 through 12.13 shall apply.

12.2 TomTec warrants that such supplies and services are free of defects, so that the agreed utilisation of the software product is enabled. We would like to point out that defects cannot be avoided in software products despite utmost care. TomTec will only be under the obligation to assume liability for defects which considerably impair the contractually presumed utilization of the product.

12.3 Should third parties claim infringements on proprietary rights as, for example, patent or author's rights towards customers through the use of TomTec Software, the customer must undertake to inform TomTec within 14 days thereof.

12.4 The guarantee of properties as well as declaration for the undertaking of guarantees by TomTec must be expressly agreed upon in writing.

12.5 In cases of faulty delivery and/or service, TomTec commits itself to supplementary delivery or service, which consists, at the option of TomTec, of the delivery of a fault-free product and/or the production of a new work or the removal of the defect.

12.6 The customer undertakes to notify TomTec of any obvious defects within a period of two weeks. TomTec should be notified of any hidden defects on their discovery.

12.7 If the supplementary delivery or service fail or if it is rejected by TomTec due to relatively high costs or if the supplementary delivery or service is not reasonable for TomTec, the customer is entitled, at his discretion, to withdraw from the contract or to demand a reduction.

12.8 Unless failure of the obligation to supplementary delivery or service occurs, the customer is not entitled to remove defects himself or to demand from TomTec reimbursement for any expenses incurred.

12.9 Any warranty by TomTec is excluded in the following cases:

a) Errors which are caused by the influence of force majeure or other external influences,

b) Errors caused by the improper utilisation of the product, in particular by non-observance of the warnings in the documentation or the intended use,

c) Errors caused by improper interventions by the customer (e.g. modifications, additions or deletions),

d) Errors caused by the repair of the products by the customer or third parties, and

e) Errors for which TomTec is not responsible.

12.10 The customer undertakes to ensure that staff handling software products are familiar with the corresponding documentation.

12.11 The warranty obligation for material defects and defective titles which exist at the time of the transfer of risk is subject to a statutory period of limitation of 12 months after the passing of risk.

12.12 In the case of deceitful concealment of a defect by TomTec, TomTec will be liable without limitation. The statutory periods of limitation will apply.

12.13 In the case of further claims, in particular for compensations, the limitations of Figure 13 will apply accordingly.

13. LIABILITY

13.1 TomTec, their legal representatives and assistants are only liable for damage in cases of wilful and grossly negligent breaches of duty.

13.2 The liability for damages from the negligent breach of an essential contractual duty is excluded from paragraph 13.1 Essential contractual duties are obligations whose fulfilment are the basis for the due implementation of the contract and whose fulfilment the customer trusts in a particular manner. This liability, however, is restricted to the predictable, typical damage.

13.3 TomTec`s liability is unlimited for the loss of life, injuries and damage to health. The same applies for the liability according to product liability law, deceitful concealment of a defect by TomTec, on taking-over of a procurement guarantee as well as according to other obligatory cases of liability.

13.4 TomTec accepts liability for the loss or destruction of data only if such loss or destruction is the result of wilfulness, gross negligence or the negligent breach of an essential contractual duty on the part of TomTec and customer ensured that the lost data consisting of data material kept in machine-readable format can be reconstructed with reasonable efforts.

13.5 Liability in cases of damage caused by force majeure is excluded. Any liability for further damages is excluded.

14. FINAL PROVISIONS

14.1 German law is applicable under exclusion of its law of conflict and the convention of the United Nations on contracts for the international sale of goods (CISG).

14.2 The place of performance and legal venue is Munich, Germany. However, TomTec is entitled to bring an action against customer at any other legal venue provided by law.

14.3 Amendments, supplements, as well as subsidiary agreements for these Terms & Conditions Software Maintenance must be made in writing. Any agreement on the reversal of the requirement of the written form must also be completed in writing.

14.4 Should one or several provisions of these Terms & Conditions Software Maintenance become fully or partially legally invalid, this will not affect the validity of the other provisions. The ineffective provisions will be replaced retroactively by a provision whose contents are almost identical and which is as close as possible to the intended purposes of the provision.